United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF

76-1040

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

-v-

HERBERT RICKS,
WILLIAM FIGUEROA,

Defendant-Appellants.

APPELLANT'S BRIEF

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PRELIMINARY STATEMENT PURSUANT TO RULE 28(3)

This is an appeal from a judgment of conviction after trial by jury before Judge Robert L. Carter. Appellant Ricks was convicted of conspiracy to violate the drug laws, and possession of narcotics with intent to distribute, and sentenced to a term of confinement in the custody of the Attorney General for a period of three years and a special period of parole of three years.

The notice of appeal was filed on the 23rd day of February 1976. This court continued Robert A. Katz (who acted as trial counsel to Ricks) of the firm of Barlow, Katz & Barlow, as counsel for this appeal.

QUESTIONS PRESENTE

1. Did the government fairly apprise defense counsel as to the particulars of the conspiracy (alleged to have commenced May 1, 1975) and more particularly, as to the

specifics which occurred in June 1975, in light of the fact that said information was duly demanded and was withheld from defense counsel until the eve of trial?

2. Did the trial court unreasonably restrict defense counsel from conducting a comprehensive cross examination to the point where such restriction would be deemed a constitutional violation of defense's right to probe the bias and credibility of the government's witnesses?

3. Should a mistrial have been granted, when the government, in opening to the jury, discussed the June 1975 transaction, the substance or details of which were not provided to defense counsel prior to the literal eve of trial?

STATEMENT OF FACTS

For the sake of brevity, and to prevent repetition, Appellant Ricks joins in the statement of facts as submitted in the brief of co-appellant William Figueroa. Appellant Ricks requests that said statement is annexed hereto (Ex. A) be deemed a part of this brief.

DESCRIPTION OF INDICTMENT

The first count of the indictment charged William Figueroa, Herbert Ricks and Jewlean Durr with conspiracy to violate the narcotics laws (Sections 812, 841 (a) (1) and 841 (b) (1) (A) and title 21, United States Code.) The second count charged Figueroa, Ricks and Durr with possession, with intent to distribute, a scheduled II narcotic drug, to wit cocaine pursuant to Ch 21 United States Code, Section 812, Title 21 United States Code, Section 812, 841 (a) (1) 841 (b) (1) (A).

The indictment alleged that each overt act supporting the conspiracy count occurred on or about September 22, 1975. It should be further noted that the substantive counts, alleged acts which occurred on or about the 22nd day of September 1975.

POINT I

APPELLANT RICKS WAS DEPRIVED OF DUE PROCESS OF LAW BY THE CONDUCT OF BOTH THE COURT AND THE GOVERNMENT

On November 5, 1975, counsel for appellant Ricks met with Assistant United States Attorney Thomas M. Fortuin. The purpose of this meeting was to provide defendant Kicks with disclosure of the particulars of the government's case. During the meeting counsel was permitted to take copious notes as to the details and particulars of the indictment from the government's records. All of the material provided concerned the alleged acts of the co-conspirators in the month of September 1975. (Tr 7)

On November 24, 1975 counsel informed the court of his receipt of a letter from the United States Attorney informing the defendants that the government intended to prove acts which occurred prior to the indictment. These alleged acts extended to a period commencing as far back as 1973, and were allegedly similar acts. The letter went on to state:

> Please be further advised with regard to the June 1975 transaction to which reference was made in my oral discussions with you (Mr. Gross on November 18, 1975 and Mr. Katz on November 19, 1975) and which the government intends to offer proof as an overt act in furtherance of the conspiracy charged, said transaction took place during the first week of June 1975 at the Saw Mill River Motel on Valley Avenue, Elmsford, New York and involved the sale of 8 ounces of cocaine to John

Miller for $10,000. The government intends to prove said act with regard to both defendants on trial. (Court's Ex. I)

Defense counsel, confronted upon the literal morning of trial, (November 24, 1975) with the government's position to expand the parameter of trial, sought to limit the government's case to the facts and time span covered in pretrial discovery. The following colloquy took place in the robing room in an attempt by counsel to resolve the problem which arose as a result of this surprise effort by the government:

Mr. Gross...In theory there was supposed to have been fully complete disclosure. I find out this morning, Mr. Kaplan informed me, that there are additional tapes. I don't know the relevance or the pertinence of the tapes, but here we are walking in this morning and he says, "By the way, I have additional tapes and you will eventually get transcripts, etc."(Tr.4)

Again, Mr. Gross...I am under the impression that disclosure is complete and this is not an unilateral situation. Suddenly the people come in and say, "Well, its complete, but its not complete." (emphasis added)

The Court...All right. The point is we are going to trial and we are going to trial now and the point is that you will have to make your accommodations in respect to the tapes later...(Tr. 6)

This statement by the court displayed the obvious futility of a request for a continuance on behalf of defendant Ricks. Counsel for Mr. Ricks therefore made the following motion:

> I move at this time, your Honor, to preclude any substance of that letter on the grounds, number one, that I believe that the people or the U. S. Attorney, knew of that information long before they filed their statement of readiness, on the further grounds, your Honor, that while I did not file a comprehensive motion for a bill of particulars here because your Honor, I am precluded from doing so under the Justice Act unless I first am told that the government will not give me full and complete disclosure, Durr did--that is the co-defendant who pleaded guilty--and a complete response was filed by Mr. Fortuin to that motion upon which I relied. Furthermore, I was invited into Mr. Fortuin's office <u>to examine a complete file, and that's how it was represented to me</u>. (emphasis added)
>
> That file had nothing in it prior to the dates in September which are recited in this indictment.
>
> The only knowledge that we had of anything prior to the September dates was in the first paragraph of the indictment the government had mentioned the date of May. None of the dates, times and places have been told to us that we would have been entitled to under a bill of particulars and, your Honor, I now move that the indictment be dismissed for the misconduct of the government in this regard, and I ask for a full and fair hearing now of each U.S. Attorney who had anything to do with this case so that we can detail for the record when the government first knew about this pertinent matter which would have been given to us under the terms of a bill of particulars.
>
> (Tr 7, 8)

The court denied this motion. (Tr. 10)

Thereafter, defense counsel, (who was determined to safeguard this issue) attempted to bar the testimony of the June 1975 transaction from being used against the defendants. (Tr 29, 61) It was for this reason that defense counsel for appellant Ricks moved for a mistrial at the conclusion of the government's opening statement. (Tr 29)

The court, continuing its blatent attempts to exclude counsel from making a proper record, refused counsel the opportunity to state the grounds of this motion on the record. Counsel for appellant Ricks was forced to file the motion in writing. (Court Exhibit 3) Finally, defense counsel again renewed the motion by moving to strike the testimony of John Miller (the informant) as to the June 1975 transaction. (Tr. 61)

It is a fundamental precept of due process of law that appellant Ricks be afforded the opportunity to investigate and answer the charges against him.

It is also fundamental that the prosecution may not add new charges after the issuance of an indictment. It is undisputed that on the eve of trial, appellant Ricks was not aware that he would be tried for what the government called

a mere additional overt act (not charged in the indictment) in furtherance of the conspiracy. In fact, this was not merely an additional overt act, but an allegation that the defendant had committed a separate criminal transaction. (Tr 11) This alleged transaction figured prominently in the prosecutor's case.

In point of fact, defense counsel had been ambushed by the conduct of the government in withholding this pertinent information. Counsel was never given an opportunity to properly prepare and defend against this charge. Such government conduct mandates a reversal and a new trial.

The United States Supreme Court has consistently held that:

> The right to a hearing embraces not only the right to present evidence but also a reasonable opportunity to know the claims of the opposing party and to meet them. (emphasis added)
>
> MORGAN v. UNITED STATES
> 301 U.S. 1 (1937) at page 18
> also see In re Ruffalo Jr. 390 U.S.544 (1968)

Clearly, defendant Ricks was not afforded this "reasonable opportunity". Appellant urges that there is no significant difference between a situation where newly appointed counsel is forced to trial in only 1 1/2 days after appointment, and, confronting counsel on the eve of trial,

(as in the instant case) with a significantly different fact pattern from that which he was prepared to meet at trial. In both instances justice has been mocked and thwarted and due process denied. WOLFS v. BRITTON 509 F 2nd 304. (8th Cir. 1975)

The Second Circuit has clearly indicated that it does not tolerate "ambushing" the defense. The Circuit has repeatedly emphasized that a criminal defendant has a fundamental right to an opportunity to prepare to meet the issues, facts and proofs. (emphasis added) UNITED STATES v. BAUM 482 F 2nd 1325 (2nd Cir. 1975). In UNITED STATES v. KELLY 420 F 2nd 26 (2nd Cir. 1969) wherein Judge Smith in criticizing the conduct of the government reversed the conviction with the following direction and observation:

> The determination not to abort the trial, which had already consumed much time and expense, is understandable in the light of the strength of the government's case, but we think in the circumstances here the other choice was the proper one. The course of the government smacks too much of a trial by ambush, in violation of the spirit of the rules... (emphasis added) (at page 29)

POINT II

THE COURT'S RULINGS OBSTRUCTED PROPER CROSS-EXAMINATION THROUGHOUT EVERY STAGE OF THE TRIAL, THUS DEPRIVING DEFENDANT RICKS OF DUE PROCESS

Prior to commencing cross-examination of John Miller, counsel for Appellant Ricks moved for disclosure by the government of all known (to the government) criminal acts of John Miller. (Court Exhibit 4) This motion was denied by the court.

Counsel then began to cross-examine Mr. Miller. The following series of questions were put to the witness:

Q. Mr. Miller, what day did your agency with the United States government terminate?

THE COURT: Mr. Katz, stand back by the lectern.

A. Could you repeat that question, please, sir?

THE COURT: When did your informant status begin?

THE WITNESS: Begin?

THE COURT: Yes.

THE WITNESS: In June.

Q. No, I'm sorry, you misunderstood the question. I asked you what date did it terminate.

A. Working with the government?

Q. That's right.

A. It hasn't terminated, I don't believe.

Q. Oh, it hasn't?

Counsel for Ricks then requested that the government state whether Mr. Miller was still an informant. (Tr 97)

At this juncture, the court abruptly dismissed the jury and began an abrasive and abusive tirade, ordering Mr. Katz as to what he could and could not do. (Tr 98, 99)

It quickly became apparent that Mr. Katz's scope of cross-examination was to be severely limited.

At this juncture, the government put forth the following statement:

> MR. KAPLAN: Your Honor, what happened here was this:
>
> He was arrested in Chicago in June 9th and he became an informant for the government.
>
> He has always been and he is today, to the best of my knowledge, an informant for the government, since the arrest in Chicago.
>
> However, the charges which were brought (sic) against him in New York by this complaint, what happened there was he was double-dealing the government, and at the time that he was an informant for the government, he went out on his own and got involved in this conspiracy which is wholly apart from one on trial, he was arrested and charged. (Tr 101)

During the course of this colloquy counsel for defendant Ricks requested that the court examine Ex. 3502 (the criminal complaint filed against John Miller in the Southern District of New York). In making this request, Mr. Katz informed the court of the intended scope of his examination:

MR. KATZ: All right your Honor. I am going to go into and cross-examine as to every allegation in that document. Before I do so, I want to know at what point he terminated being an SCI for the government. If he is still an SCI today for the government, I want that, also, made clear upon the record. (Tr 100, 101) (See also Court Exhibit 4)

After the court's examination of this exhibit, it ruled as follows:

THE COURT: All right. I am not going to allow you to go into detail on that. You can ask him what charges are pending against him and get his answer, but you are not going into it. (Tr 101, 102)

Thus, effective cross-examination as to the nature and extent of Mr. Miller's criminal involvement (clearly essential to effectively impeach his credibility) was foreclosed.

Jewelean Durr was a critical witness for the prosecution, so that full and extensive cross-examination and an attempt to impeach this former co-defendant witness was vital to the defense. Nevertheless,

in the presence of the jury and before counsel for Ricks was able to phrase a single question, the court improperly and severely limited counsel's right to properly cross-examine Miss Durr.

> THE COURT: All right. Mr. Katz. I want to make clear before you start, Mr. Katz, that I am not going to allow you to go over ground that Mr. Gross has gone over. You may, if you want to explore further in the area, but you are not going over the same ground.
>
> MR. KATZ: Your Honor, I except to your ruling.
>
> THE COURT: You don't have to except to it. The ruling is there and you abide by it. Now continue. (Tr 229)

With this restrictive admonition of record defense counsel attempted to impeach Miss Durr by the use of her prior inconsistent statements, only to find the court religiously protecting the witness from the perfectly proper attack.

The court's conduct severely hampered the cross-examination by defendant Ricks. The court refused to permit questioning based upon an affidavit

sworn to by Miss Durr prior to trial. (Ex. 3507) Counsel was not permitted to utilize Miss Durr's plea of guilty to demonstrate that the facts as related to the court when Miss Durr pled guilty, were not consistent with her direct testimony at trial, and her previous testimony on cross-examination, relating to the location of the cocaine at the time of the arrest on September 22, 1975. (Tr 213, Ex. 3508, Tr 231, Ex. 3504, Tr 233, Tr 234, Tr 235)

The conduct of the court unreasonably and improperly restricted counsel in his attempt to cross-examine the government's main witnesses. In view of the nature of the testimony, the imposed restrictions resulted in a deprivation of due process, and effective assistance of counsel.

That the court's conduct in the case at bar was wholly improper, is demonstrated most clearly by the holdings of the United States Supreme Court.

Cross-examination has been defined as...

> the right of the party against whom the witness is called, and the right is a valuable one as a means of separating hearsay

> from knowledge; error from truth; opinion from fact; and inference from recollection, and as a means of ascertaining the order of events as narrated by the witness in his examination in chief; and the time and place when and where they occurred, and the attending circumstances; and of testing the intelligence, memory, impartiality truthfulness and integrity of the witness. (emphasis added)

The OTTAWA v. STEWART
70 U.S. 166

The United States Circuit Court for the Second Circuit requires latitude in cross-examination of a witness who is an accomplice and/or co-conspirator. Both John Miller and Jewelean Durr were accomplices, and co-conspirators in the case at bar. This court has stated that:

> When a witness in a criminal case is being questioned as to his possible motives for testifying falsely wide latitude should be allowed in cross-examination...
>
> Indeed where the principal witnesses appearing in behalf of the prosecution...have engaged in illegal practices and are accomplices to the crime charged, it is essential to a fair trial that the court allow the defendant to cross-examine such witnesses as widely

as the rules of evidence permit.
(emphasis added)
UNITED STATES v. MASINO
275 F 2nd 129 (2nd Cir.1960)

See also UNITED STATES v. PADAGENT
432 F 2nd 701 (2nd Cir.1970)

A reversal is mandated where the court seeks to protect a witness from disclosure of prior criminal acts by restricting counsel's right to cross-examine. DAVIS v. ALASKA, 415 U.S. 308.

In DAVIS, a reversal of defendant's conviction was ordered when defense counsel was prevented from cross-examining a witness as to certain facts, because the trial court sought to protect the witness from disclosing a prior adjudication of juvenile delinquency. DAVIS v. ALASKA, supra.

Impeachment of prosecution witnesses by cross-examination directed to specific acts of misconduct tending to show the witness's tendancy towards moral turpitude has long been recognized as proper; too, is the impeachment of a witness by use of prior inconsistent statements. WIGMORE, EVIDENCE, §1037. The bias of a witness, and his motive for

testifying falsely is properly shown by cross-examination predicated upon the witness's own acts or declarations which demonstrate that bias. WIGMORE, EVIDENCE §§949, 950.

The blatent violation of these fundamental rules of evidence by the Trial Court resulted not in harmless error (Rule 52, 18 U.S.C.) but in the denial of due process of law and effective assistance of counsel to appellant.

CONCLUSION

The constitutional violations committed by the Trial Court effectively deprived Appellant Ricks of a fair trial. These violations may only be corrected by a reversal of the judgment of conviction and a new trial.

Dated: New York, N. Y.
March 8, 1976

Respectfully submitted,
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PRELIMINARY STATEMENT

Appellant, WILLIAM FIGUEROA, appeals from a judgment rendered against him in the United States District Court for the Southern District of New York, on January 15, 1976, convicting him, after a trial by jury, of the crimes of conspiracy to violate the drug laws and possession of narcotics with intent to distribute, and sentencing him to three years imprisonment on each charge; sentence to run concurrently (Carter, J.). Appellant is presently incarcerated.

STATEMENT OF FACTS

Prior to trial, counsel for co-appellant, Herbert Ricks, informed the Court, that by a letter dated November 21, 1975 sent by the government to him, he was, for the first time, informed that the government intended to introduce evidence relating to acts committed in June, 1975, alleged to have been committed in furtherance of the conspiracy (6).* It is not apparent from the record when this letter was received by counsel, but it would seem that it could not have been received before November 22, 1975, two days before trial. Moreover, November 21, 1975 was a Friday, so that the opportunity to act upon the letter was restricted to one weekend. Counsel pointed out to the Court that the motion for a bill of particulars made by counsel for Jewelann Durr, at the time of

* References are to the minutes of trial.

EX-A

a co-defendant,
the ~~his~~ motions/ requested disclosure of any and all such prior acts alleged to have been committed in furtherance of the conspiracy (7). The government did not so disclose, because, it alleged, this information first came into its possession on Monday or Tuesday, November 17th or 18th, 1975 (8). Further, the government alleged that Mr. Katz was informed of the offer of proof on November 19, 1975 (9). No such representation was made as to counsel for Mr. Figueroa. Motions by counsel to preclude the proffered proof was denied (10).

THE GOVERNMENT'S CASE

JOHN MILLER testified that in June 1975, he met Jewelann Durr at the office of Harry Robinson (38-39). Miller was at the office first, Robinson called Durr; she came to the office and gave Robinson a tin-foil packet. Robinson gave the packet to Miller who went into a bathroom, opened it and saw a white powder inside (39-40). Miller then asked the price. The price was too high, so Durr made a telephone call, but the party she called was not in. Durr said that she would call back in an hour (42). Miller had been using cocaine for some eight years, and he stated that the white powder was cocaine (43). Miller, Robinson and Durr then went to a restaurant, where Durr made another call. When she returned, she told Miller that the price was $12,500 for eight ounces. Miller felt the price was too high, so he got on the phone to speak to "herbie" (44). Miller offered to pay $10,000 for the eight ounces. It was then agreed that later Miller would contact Durr at her office. Miller made the call, and Durr told him that the

sale was set for that evening. Miller set the place of the sale at his motel room in Elmsford. Durr gave him a telephone number and told him to call "Herbie". Miller spoke to "Herbie", who agreed to the Elmsford location and it was further agreed that they would meet at 8:00 p.m. (46-48) Miller and a woman whent to this motel (Sawmill River Motel). At 10:00 p.m., Miller was in his room. He heard a knock on the door, opened it, and saw Durr and a man introduced as "Herbie" (51). Herbie (appellant Ricks) brought only a small amount of cocaine, and gave Miller a small packet of cocaine for $100 (51-53). Ricks said he would call Miller in a few hours to arrange the conclusion of the sale (53). About two hours later, Ricks called and told Miller he would be over with the cocaine in forty-five minutes (55). About an hour and a half later, Ricks and Durr returned to the motel, delivered eight ounces of cocaine and received $9,900 payment from Miller (56). It was agreed that the next day (June 6) Ricks would return and cut the cocaine for Miller (57). At 3:00 p.m. the next day, Ricks arrived at the motel room and cut the cocaine so that it now was two twelve ounce bags. Ricks charged Miller $50.00 for the milk sugar and his labor (59).

Miller then went to the airport and flew to Chicago. On June 9, 1975, he was arrested and became an informer for the DEA (60,87).

On June 10, Miller called Ricks and Durr to say that all was well (60,61). Two weeks later, Miller again called Ricks and asked for a kilo of cocaine. Ricks said he could get it and a price of $36,000 was agreed upon (60).[1]

1. A motion to strike this portion of Miller's testimony on the grounds of insufficient notice was denied (61).

On September 18, 1975, Miller spoke to Durr and asked for a pound of cocaine. Durr said she had to speak to her man (62). Miller asked to speak to Ricks and was told to call back the next day. This conversation was taped (62).

On the 19th, Miller spoke to Ricks about getting the pound of cocaine. Ricks said he could get at least eight ounces and possibly more (66)

On Monday, September 22nd, 1975, Miller made a call from DEA headquarters. Miller spoke to Ricks about the purchase of a pour of cocaine by a certain woman (70). A meeting at 83rd and Third Avenue was set for 2:30 p.m. (69-70). At about 2:15 p.m., Miller was picked up by Agents Levine and Dolan. They searched Miller and gave him $10,000 for a "flash roll" (72). Miller then entered the location agreed upon (Martel's Restaurant). About forty-five minutes later, Durr and Ricks came in and sat at Miller's table (72-73). Miller saw that Dolan, Levine and other agents were surveilling the meeting (73). Miller told Ricks that he wanted a kilo. Ricks said that all he could get was a pound and that he had to speak to his man (74). Miller then inquired about heroin, but Ricks said he only dealt in cocaine (75). A price of $20,000 for the pound was agreed upon; they left the restaurant and Ricks told Miller to call him in one hour (75).

Miller called Ricks from DEA headquarters. Durr answered and told Miller that Ricks was out trying to find his man. She told Miller to call back around 6:00 p.m. At 6:00 p.m., Miller spoke to Ricks on the telephone. Miller told Ricks that the purchaser

was pressing him and that they had only until 10:00 p.m. to complete the deal (76). Ricks agreed, and told Miller that he had to go out, meet his man, and pick up the package (77). Miller told Ricks to meet him at the Skyline Motel, room 246 (79-80).

Miller and several agents went to the Skyline, the agents went into an adjoining room. Miller and Agent Campbell, posing as the purchaser, stayed in room 246 (81). At about 9:55 p.m., Ricks and Durr came to the room. Ricks threw eight ounces of cocaine on the dresser and told Miller that was all he could get. Agent Campbell indicated this was not acceptable. Miller tasted the cocaine (82), and at this point, the other agents rushed into the room and arrested Ricks and Durr (83).

JEWELANN DURR - Testified that she had first met Ricks some two years earlier while working as a waitress (130-131). She first met William Figueroa in 1973 (133). She and Ricks began living together in April, 1974 (135). During the period of time, April 1974 to March 1975, she saw Figueroa several times at her house or his (139). On these occasions, Ricks was always present (139). Ricks and Figueroa would go into another room and she never saw or heard what they did (144).

Durr then d testified as to the meeting in June, 1975, at Robinson's office. Her testimony was essentially the same as Miller's. She knew that she was going to meet Miller and that he, Miller, would want a sample of cocaine. Ricks gave her a sample, which was given to Miller at Robinsons (153-160). After it was agreed that Ricks and Durr would meet Miller at the Motel in

Tarrytown, Ricks left Durr. When he returned, he told her that he had been to speak to "Willie" about the cocaine (161). They then drove to the motel; afterwards, they drove to Figueroa's house in Brooklyn (166). Ricks made a call from Figueroa's. Then Ricks and Durr, and Figueroa's brother, following in another car, drove to the motel (167-168). After the sale, they drove back to Brooklyn. Ricks gave Durr $400 explaining that he owed "Willie" money for some cocaine, so he, Ricks, had made only $800.00 on the sale (170).

She next heard from Miller some two months later. Miller asked Ricks to come to Las Vegas (172-173).

On occasions during 1974 and in July 1975, Figueroa left packages of cocaine for Ricks, who left money with Durr to pay Figueroa (175).

She next heard from Miller on September 19, 1975. Miller said he was coming to New York on Monday, and he wanted two pounds of cocaine (178). Miller called the next day and spoke to Ricks (179). On September 22, 1975 Miller called and spoke to Ricks. A meeting at Martel's Restaurant was arranged. Ricks left the apartment and returned at 2:00 p.m. (180-181). They went to Martel's and discussed a sale of cocaine with Miller. Ricks and Durr left Martel's. Ricks told Durr that he had to see Figueroa to find out if he had any cocaine for him. They went to Durr's home, where Ricks made a call. He told her that he was going to see "Willie" about the cocaine (185). Ricks came back an hour later and told

her that they were to meet Figueroa at 9:00 p.m.

At 6:30 p.m., Miller called and spoke to Ricks. Ricks asked Durr for pencil and paper and wrote down a telephone and room number at the Skyline Inn, for a 10:00 p.m. meeting (186). At 9:00 p.m., Ricks and Durr drove to Figueroa's mother's house. Ricks got out, Figueroa's brother came over and spoke to Durr, who told him Ricks had already left the car (188). Durr then went into the house, where she saw Figueroa give Ricks two bags of cocaine in plastic bags (189). Ricks and Durr got into their car. Ricks gave Durr the two plastic bags, which she put into her handbag (189). William Figueroa then pulled up and they followed him into the city. As they were driving, Ricks gave her some cutting material and told her to cut the cocaine (189-190). The cocaine she tool out of the bags, was placed in a pouch and put under the armrest of the car (192-193). They drove to the Skyline and went up to Miller's room, where the sale was consummated and all the participants were arrested (193-194).

AGENT MICHAEL LEVINE, on the day of the arrest, questioned Ricks and Durr at headquarters. Durr told him that the cocaine had come from William Figueroa (252-253).

AGENT JAY SILVESTRO surveilled the meeting at Martel's and followed Ricks and Durr to Rockaway Boulevard. Later he surveilled the sale at the Skyline. He saw Figueroa sitting in his car. When the arrest in the room was made, he was ordered to arrest the man in the green car (275).

AGENT EMILIO GARCIA was with Agent Silvestro. After the arrests, he removed an ounce of cocaine in a pouch from Rick's car (282). Garcia spoke to Figueroa after the arrest, and was told that he, Figueroa, was in the area because he was on his way to Victor's Cafe to eat, after he had closed up the family business (289).

THE DEFENDANT'S CASE

WILLIAM FIGUEROA testified in his own behalf. He stated that he had never delivered any packages or parcels to 717 Rockaway Parkway, and never left anything for Durr at that address, nor did he ever get any money from Durr (324).

He did not go to a motel in Elmsford in June 1975 (325).

On September 22, 1975, between 9:00 and 10:00 p.m. he wasn't at his mother's, he was at the family grocery store, working (325). He never delivered anything to Ricks or Durr on that day (325). After closing the grocery store on the 22nd, he drove to Victor's Cafe to get something to eat (351-353). He did know Ricks from the neighborhood, but neither was ever in the others home (327). He did speak to Ricks on the telephone (327). He had never met Durr (328).